

The Repercussion of the Brazilian Forest Code in the Small Property of Family Agriculture

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Abstract— This article has as main objective to analyze the repercussion of the Current Brazilian Forest Code on Small Family Farming. It is an explored activity through the personal work of the family farmer and rural family entrepreneur, influencing the country's economy. In this context, this work seeks to discuss the changes at N°. 12,651/2012 law, brought to the small rural producer, showing the APPs, the Legal Reserve areas and the Registration with the CAR. The research methodology was developed through critical bibliographic analysis of legislation, periodicals, doctrines, and books. As a result, it was demonstrated that the forestry legislation recognized the importance of small family farmers, granting different treatment. It is noticed that the Brazilian Forest Code Legislation was instituted to apply the reality experienced by small producers in land use, which must make development compatible with the preservation of biodiversity.

I. INTRODUCTION

Family farming has received numerous definitions over the years, but in general it can be characterized as subsistence agriculture, of small production, being initially insignificant for the development of the country (GUANZIROLI; CARDIM, 2000).

During the 1990s, according to Esquerdo Souza and Bergamasso (2014), the segment was rediscovered and recognized for its social and productive category, and public policies were created in its favor, valuing the importance of these small productions for the country's growth. It should also be noted that prior to this period, public policies were aimed only at medium and large properties.

When it comes to Brazil, today 70% of the food that arrives at the table of Brazilians originates from the work of family farmers, being produced in 25% of all the land used by agriculture (RBA, 2019).

Given the economic characteristic of family farming, the reflex that the new Forest Code may have in this segment of agriculture has been much discussed, considering the countless changes in relation to the old Code, Law nº 12.651 / 2012 and it is questioned how are the small rural producers with the reformulation of the law given by provisional measure 867, of December 26, 2018 (BRASIL, Law nº 12.651 / 2012).

Considering the history of Forest Codes in Brazil, Césaró and Ferreira (2018, p.65) point out that:

With each new edition, advances were contemplated. In the current code, the mandatory national electronic registration of all rural properties, demarcating legally protected areas is an important and decisive advance.

In this context, the present work, through bibliographic exploratory research, seeks to analyze the repercussions that the changes in the Current Forest Code can have on family farming and to investigate the legislative treatment that supports this farmer, as well as to study the reflexes of the forest code in relation to rural environmental registry and two complexities.

II. HISTORY OF FAMILY FARMING AND THE BRAZILIAN FOREST CODE

In Brazil, the first indication of a family characteristic in agriculture occurred in the Northeast, around the 16th century marked by its colonial origins of the economy, influenced by the lifestyle of the peasants and the functioning of their family production units (WANDERLEY, 2011).

According to Vinciguera (2014) for a long time, family farming was seen as a marginal segment of little importance, given that in the first moment agriculture in Brazil is especially focused on the cultivation of coffee, sugar cane and soybeans, products considered at that time as the focus of the benefit of public policy, being the country man seen as a person of little intelligence and unable to make effective decisions.

In the governmental sphere, Savoldi and Cunha (2010) emphasize that family farming was included as a priority in the second half of the 90s, more specifically when the National Plan for Strengthening Family Agriculture was launched in August 1995, such a plan it was initially just a credit line for funding, which a little

further, through the workers' claims through CONTAG (National Confederation of Agricultural Workers), culminated in the creation of PRONAF (National Program for Family Agriculture Workers), in 1996.

In 1934, with Decree No. 23.793 / 34, the first Brazilian Forest Code came into force, at that time landowners were concerned only with the agricultural and livestock production of the property and the government focused on the production of wood. and firewood, therefore, there was still no concern with the sustainability of the environment, there was no thought of the importance of biodiversity, there was still a belief that natural resources were endless (CÉSARO, FERREIRA, 2018).

Still talking about the subject, Césaró and Ferreira (2018) point out that the great milestone of the Forest Code of 1934 was the promotion of the conservation of natural resources, a position determined in their art. 23 that landowners keep 25% of their property areas covered by original forest, also known as "fourth part", according to the authors, although this conservation initiative aimed at a first moment for economic development, such as the production of firewood and coal, was a big step in forest conservation.

A little further on, Césaró and Ferreira (2018) point out that in 1965 the second Forest Code was edited by means of Federal Law No. 4,771 / 65, which allowed the squatters to deforest up to 50% of the lots, and in case the colonist did not carry out deforestation, the Union could retake the property, which meant that in other regions of the country, due to the absence of punishment, the deforestation took on alarming proportions, bringing an idea of legal irregularity before the Forest Code.

In 2012, the Brazilian Forest Code was sanctioned through Law No. 12,651 of May 25, 2012, which provides for the protection of native vegetation, the result of a very controversial legislative process, accompanied by society, the scientific community and the press, where prevailing the interests of a particular agricultural sector. Still on the Forest Code, Césaró and Ferreira (2018) explain that, this new Law deals, among others, with the suppression of vegetation for alternative use of the soil, both in the public and private domain, determining the land owners to register the property in the CAR, in addition to providing for several measures related to the preservation of the environment and administrative sanctions, suspending fines that were applied until 07/22/2008 related to the irregular suppression of vegetation in the areas of legal reserve, permanent preservation and restricted use, as they require specific regulations.

2.1. CHARACTERIZATIONS OF SMALL FARMERS AND FAMILY FARMING

At the beginning of colonization, Schallenger and Colognese (1993) report that small farms concentrated on the development of diversified agricultural production, basically focused on subsistence, trading only surpluses, this phase predominated from the 1950s to the 1960s. the family unit was considered to be self-sufficient, using the markets only to buy an item that was not produced in its rural property.

This system of traditional agricultural cultivation predominated for a short period of time, because when there was the colonization process, there was also the transition from traditional to modern agriculture, in the early 1970s, the small family agricultural producer was forced to abandon the subsistence productive system: rice, beans, potatoes, cassava for crops that aimed at commercialization, such as wheat and soy (ZAAR, 1999).

In order to corroborate with the aforementioned authors, Stoffel et al (2014) points out that this happened at the moment when the progressive cultivation of soy and wheat was installed, with the incentive of mechanization of the lands, motivated by government aid, which financed the clearing of forests and the acquisition of machinery, thus consolidating a new form of agricultural production, basically focused on products that introduced greater integration and subordination of agrarian activities, agribusiness and state policies.

Over the years family farming has undergone several changes in its form of production, characterizing family ownership primarily in art. 4th of the Land Statute, Law No. 4.504 / 1964, in verbis:

[...] II - Family Property - The rural property which, directly and personally exploited by the farmer and his family, absorbs their entire workforce, guaranteeing their subsistence, social and economic progress, with a maximum area fixed for each region and type of exploitation, and eventually work with the help of third parties (BRASIL, 1964).

A little later in 1993, with the publication of Law No. 8,629 / 1993 that regulates the provisions related to agrarian reform, the legislator conceptualizes the term "small property", however it refers to it, only in terms of the size of its area, without any mention of family property, then the opportunity in agrarian legislation to resolve this issue is lost (JUNGSTED, 2019).

In 2006, Potrich and Grzybovski (2017) highlighted the definition of small family farms through the publication of Law 11.326 / 2006 that defines them as establishments characterized as having rural land not exceeding four fiscal modules, using family labor, small-scale production and income, mostly from activities produced in their own establishment, and as such, the small rural property can be understood as family farming, contrary to the concept of agriculture employers, which are basically characterized by large properties, large-scale production and the use of salaried or wheeled labor.

Thus, it is possible to identify according to Jungsted (2019) that the family property has its delimitation based on a medicated unit called 'rural module', while the small rural property is delimited by the unit of measure called 'fiscal module'.

Mendes' explanation (2020) about these modules should be highlighted, the similarity between them is due to the fact that both mention area units, which are expressed in hectares units, however, the rural module is a unit established by a rural property, where each one can have its dimension in hectares based on its shape, dimension, location in the municipality and the economic use that occurs in a given municipality by this property.

Finally, still mentioning the legislation pertinent to the concepts in question, it is worth mentioning art. 3, of Law n° 12.651 / 2012, current Forest Code, which defined it, in verbis:

[...] V - Small family property or rural possession: That which is exploited through the personal work of the family farmer and rural family entrepreneur, including settlements and agrarian reform projects, and which meets the provisions of Article 3 of Law 11.326, of July 24, 2006 (BRASIL, 2012).

Therefore, according to Jungsted (2019) it is possible to find the small rural property without it being used exclusively by the family, however, it is understood that the family property is entirely linked to the small rural property, that is, not all small rural properties it is a family property, however, every family property is a small rural property.

2.2. FAMILY AGRICULTURE AS A SOURCE OF LIVELIHOOD AND ENVIRONMENTAL SUSTAINABILITY

Family farming can be considered as a source of livelihood and an income and employment-generating practice for rural populations. In this sense, the expansion

of policies that strengthen this activity in rural areas, becomes essential for the formation of a sustainable local development (ALMEIDA, 2016).

According to studies by Ehlers (2008), the notion of sustainability in family farming has the main objective of reconciling food security with the obligation to conserve natural resources, which demands, in addition to previously acquired knowledge, conventional agronomic knowledge integrated with systemic knowledge. , thus integrating several components of an agroecosystem.

To have a sustainable practice in family agricultural production, it is necessary, above all, the appropriate use of technologies, where they serve a local community in its various factors such as: use of fertilizers, soil preparation, resources for the appropriate harvest and aggregation of value to products, resulting in positive economic results, and, therefore, sustainable social results, where the sustainability of family farmers will depend solely on the interaction between all dimensions, social, environmental, economic, spatial and institutional (STOFELL, 2014)

Family farming is one in which the family, while owning the means of production, takes over work in the productive establishment. It is important to insist that this family character is not a mere superficial and descriptive detail, that is, the fact that a productive structure associates family-production-work has fundamental consequences for the way it acts economically and socially (SANTOS, 2014).

In Brazil, Law 11.326 / 06 of July 24, 2006 establishes the National Policy for Family Farming and Rural Family Enterprises, as follows, in verbis:

Article 3 - For the purposes of this law, a family farmer and a rural family entrepreneur are those who practice activities in the rural environment, simultaneously meeting the following requirements:

I - Do not hold, for any reason, an area greater than 4 fiscal modules;

II - Use predominantly family labor in the economic activities of your establishment or enterprise;

III - Have a minimum percentage of family income originating from economic activities in your establishment or enterprise, as defined by the executive branch; (Law 12.512, of 2011);

IV - Run your establishment or enterprise with your family (BRASIL, Law nº 11.326 / 2006).

According to Noda (2006) family farming is also characterized with an emphasis on agricultural production for self-consumption, where production is aimed at maintaining the biological and social reproduction of the family farmer. In addition, the legally established area for the practice of family farming in Brazil is a maximum of four fiscal modules (MF), which according to the Brazilian Agricultural Research Corporation (Embrapa) is an agrarian measurement unit which represents the minimum area necessary for rural properties to be considered economically viable (LANDAU, 2012).

According to Vinciguera's conception (2014, p.8);

family farming means the cultivation of land by a family, where the producer takes the products for his own consumption and for possible commercialization, the farmers being managers and workers of the land themselves. Cultivation is carried out by small rural producers, with labor in most cases the family, eventually complemented by wage labor.

Taking as a reference the data from the last Agricultural Census of 2017, it appears that there was a significant growth of family farming in the context of Brazilian agricultural production, compared to the Census carried out in 2006, in the 2017 Census, 3,897,408 establishments met the criteria of the Law and were characterized as family farming, representing 77% of the total establishments visited, occupying an area of 81 million hectares, that is, 23% of the total area of Brazilian rural establishments. As for the production value, it is possible to identify according to the census data that family farming is responsible for 23% of the total production value of the establishments (IBGE, 2017).

III. THE REFLECTIONS OF THE FOREST CODE IN THE LEGAL RESERVE AND PERMANENT PRESERVATION AREAS IN THE SMALL FAMILY FARMING PROPERTY

According to Law No. 12,651 / 2012, entitled Brazilian Forest Code, the owners and owners of rural properties must use their land respecting the limitations that general legislation and especially the Forest Code establish, of these limitations four are especially important and deserve due mention, they are: the APPs; the legal reserve (RL); areas of restricted use; and also, the prior

authorization of the competent body for the suppression of vegetation for alternative use of the soil (SILVA, MARQUES AND SAMBUICHI, 2016).

The legal reserve area is located inside the rural property, where the land owner has the obligation to maintain an area with native vegetation coverage, respecting a required percentage that varies depending on the biome in which the rural property is located, 80% of which when it is located in forest areas, 35% in cerrado areas and up to 20% in areas of general fields and in other regions of the country (BRASIL, 2012).

According to Law n° 12.651 / 2012 Brazilian Forest Code, the creation of legal reserve areas in family farming has the main objective of controlling the rampant deforestation of fields, promoting the more rational use of rural properties, conserving natural resources and biodiversity (MACHADO, 2010).

About this, Padovezi, et al (2018) comment that as to the location of the legal reserve, it is determined by the rural owner himself, however, it depends on the approval of the competent environmental agency, when approved it must be registered in the CAR and cannot be its location subsequently modified, except in cases of public utility or allocation in areas with better environmental function.

For Antunes (2015) the current Brazilian Forest Code is explicit in the characterization of the RL, since it is necessary for the sustainable use of natural resources, flora and fauna, and the person responsible for the area can enjoy it, as long as it guarantees its preservation.

They are delimited in art. 4 of the current Code, which thus provides, in verbis:

Art. 4 - It is considered a Permanent Preservation Area, in rural or urban areas, for the purposes of this law:

[...] the marginal strips of any natural watercourse (riverside riparian forest); around the springs and the perennial water eyes; around lakes and natural lagoons; around artificial water reservoirs; on slopes or parts of these with a slope greater than 45 °, on the tops of hills, hills, mountains and mountains, etc. (BRAZIL, 2012)

The Forest Code provides in its articles 4 to 9 the legal protection over APPs and lists several categories for each of them, defines the parameters of the protection range in which the vegetation must be preserved, and as a general rule, is that it cannot there should be economic exploitation of forest resources in these areas, with only

access for people and animals to obtain water and to carry out activities with low environmental impact (BRASIL, 2012).

Therefore, according to the Forest Code, it is foreseen that the vegetation located in APP is maintained by the owner of the area, owner or occupier in any capacity, individual or legal entity, of public or private law, with emphasis on the fact that vegetation suppression has occurred. located in these areas, the person responsible for it promotes the restoration of vegetation, except for the authorized uses provided for in this law.

It is noted that in case of unauthorized suppression of vegetation carried out after July 22, 2008, it is forbidden to grant new suppression authorizations until the obligations provided for in Law 12.651 / 12 are not met.

As for the minimum lengths and widths of APPs, these are described in art. 4 of the Forest Code in force, however, each state and each municipality that has its own forest code can determine, according to their local particularities, different areas that must be investigated, thus, anyone responsible for a rural property that has the objective of to use these protection areas, before starting the deforestation process, you need to pay attention to the requirements of these rules and make them comply, and you must first of all request the necessary licenses to deforest at the competent environmental agencies (CÉSARO; FERREIRA, 2018) .

It should also be noted in art. 4th § 5 of the aforementioned Law, the permission for the planting of short-term seasonal and seasonal crops in areas of permanent preservation by small property or family rural possession, which thus provides, in verbis:

§ 5 - It is admitted, for the small family property or rural possession, referred to in item V of art. 3 of this Law, the planting of temporary and seasonal crops of short cycle ebb in the strip of land that is exposed in the period of ebb of rivers or lakes, provided that it does not imply suppression of new areas of native vegetation, water quality is preserved and the soil and the wild fauna is protected (BRASIL, 2012).

This time, they point out that APPs play a role in protecting water resources, which are mainly the stabilization of slopes and slopes, the maintenance of river morphology, protection against flooding, regulation of water temperature, the retention of sediments and nutrients and soil protection due to impacts caused by rains.

Corroborating with these authors, Chiavari and Lopes (2016) state that permanent preservation areas are necessary in order to preserve environmental services considered essential, such as water supply, geological stability and soil protection.

APPs form vegetation of essential importance for the maintenance of the environment, and predatory exploitation is not even susceptible to private properties, and their preservation is in the public and private interest, with both the owner of the rural property and the public authority the duty to protection and conservation, directly or indirectly, not allowing the degradation of springs, river banks and mountain slopes (CÉSARO; FERREIRA, 2018).

This time, APPs and RLs, according to Machado (2010) are distinct legal figures, equally created by Environmental Law, both limiting the full exploitation of rural property, both aimed at nature conservation, differing in the fact that the former cannot to be the object of exploitation, as it can occur in the case of the legal reserve, allowing the law for sustainable forest management, being an extremely important step in the conservation of ecosystems and of strict relevance to the quality of life on earth.

3.1. THE SPECIAL IMPACT OF THE FOREST CODE ON SMALL FAMILY FARMS

With regard to rural property management instruments, the most important innovation brought by the Forest Code was the creation of the CAR (Cadastral Ambiental Rural) at the national level, it is a mandatory electronic public record for all rural properties and aims to purpose to integrate the environmental information of rural properties and possessions, composing a database in order to control, monitor and combat deforestation of forests and other forms of native vegetation in Brazil (CÉSARO; FERREIRA, 2018).

Regarding the enrollment in CAR, the current Forest Code, in its art. 29 ° thus provides, in verbis:

[...] § 1 The registration of the CAR rural property must be made, preferably, at the municipal or state environmental agency, which, under the terms of the regulation, will require from the rural owner or possessor:

I - identification of the rural owner or owner;

I - proof of ownership or possession;

III - identification of the property by means of a plan and descriptive memorial, containing the indication of

the geographical coordinates with at least one mooring point on the perimeter of the property, informing the location of the remaining native vegetation, the Permanent Preservation Areas, the Use Areas Restricted, the consolidated areas and, if any, also the location of the Legal Reserve (BRASIL, 2012).

Registration with the CAR takes place through some data collection requirements, such as identification of the owner or rural owner, proof of ownership or possession and identification of the property through georeferencing, informing the location of APPs, areas of restricted use, reservation legal, consolidated areas, areas of remnants of native vegetation, such information will compose an electronic database that should point out environmental irregularities in the areas that must be protected, which can be remedied in accordance with the current Law (SILVA; MARQUES; SAMBUICHE, 2016).

Registration in the CAR is mandatory for the exercise of various rights such as obtaining authorization for the suppression of native vegetation, the calculation of APP in the areas of legal reserve, the maintenance of activities and consolidated areas, in addition to being mandatory for the concession of rural credit by all financial institutions as of 2017, as provided for in Article 78 - A of that Law. (BRASIL, 2012).

It is also important to mention, according to Césaró and Ferreira (2018) the PRA - Environmental Regularization Program that aims to adapt rural properties to the terms of the Forest Code, promoting the environmental regularization of areas consolidated in APP and legal reserve that were occupied with activities agrosilvipastoris, before July 22, 2008, based on Art. 59 of the aforementioned Law, determining that the adhesion to the program should be made within one year from its implementation by the state and extended for another year since the rural property be enrolled in the CAR.

In order to better understand the repercussion of the current code in force in the properties of the small rural producer, it is necessary to understand according to Césaró and Ferreira (2018) that the size of the rural area determines how many fiscal modules exist in each property, being the fiscal module a parameter for classifying the property as to the size of the area.

In this sense, the same authors mention that:

Rural properties, depending on the size of the area, are classified by INCRA in Smallholdings, with an area of less than 1 (one) fiscal module; Small

Property, area between 1 (one) and 4 (four) fiscal modules; Medium Property, area greater than 4 (four) and up to 15 (fifteen) fiscal modules and Large Property, area greater than 15 (fifteen) fiscal modules (CÉSARO; FERREIRA, 2018, p.83)

As previously stated, the registration of the property in the CAR is the first obligation on the part of the rural owners and owners, however, with respect to small rural producers, or owners of properties with up to four fiscal modules, the first difference in the process of environmental regulation is in the rules for the registration of the CAR, because for these smaller rural properties, the New Forest Code established a simpler process, in which only the presentation of a sketch for the identification of the rural property will be mandatory, indicating the perimeter, the APPs and the remnants of native vegetation that form the legal reserve, as provided for in art. 8 of the referred Law (SILVA; MARQUES; SAMBUICHE, 2016).

It is considered that if the occupation occurred after July 22, 2008, the regularization of these areas will be done without any advantage, following the general rules of the Forest Code, however, if the occupation with agroforestry activities took place before July 22 As of 2008, the regularization of these areas should follow special rules, even more flexible than those provided for larger properties, requiring adhesion to the PRA and the signing of the term of commitment (SILVA; MARQUES; SAMBUICHE, 2016).

Also according to Silva, Marques and Sambuiche (2016) the great advantage in regularizing areas consolidated in APP before July 22, 2008 for smaller properties is linked to the parameters of recomposition of APP vegetation, since in this case, the marginal strips protection varies according to the size of the rural property, and in consolidated areas of relief there is no need to compose the native vegetation of the APP.

It appears that these activities are carried out with practices that conserve soil and water, and as for the methods of recomposing vegetation in small rural properties, there are rules considered more beneficial, it can be done naturally or by intercropping of woody species. perennial or long-cycle native species with regional occurrences with exotic species, which may occupy a maximum of 50% of the total area, unlike the larger real estate areas, where the restoration of APP must be done with 100% of native species.

Finally, still citing studies by Silva, Marques and Sambuiche (2016), the biggest advantage granted by the Forest Code to small producers concerns the legal reserve,

in rural properties with up to four fiscal modules, the occupation of the legal reserve area with activity rural area consolidated before July 22, 2008, there is no obligation neither to recover nor to offset the legal reserve, as provided for in art. 67 of the aforementioned Law, and yet, as an example of another advantage, the owners or possessors may issue the CRA (Environmental Reserve Quota) under the native vegetation that makes up the legal reserve while for properties larger than four fiscal modules, the CRA it can only be issued under native vegetation that exceeds the legal reserve. Observing then, that the advantages granted by the Forest Code in force to property owners are less rigid and with more simplified steps.

IV. CONCLUSION

The importance of small rural properties to Brazil is undoubtedly, the number of beneficiaries and the contribution to income generation is the differential for fixing man in the countryside, becoming essential for the economy, whether in grain production or in agriculture.

Research has shown that small family farms are essential as a source of family livelihood and are compatible with sustainable rural development.

The property is classified as a small rural property, according to Art. 4 of Law nº 11.326 / 06, it is considered a family farmer and a rural family entrepreneur: "one who practices activities in the rural environment, simultaneously meeting the requirements of not holding, in any case, area greater than 4 (four) fiscal modules.

Of the changes brought about by the current forestry legislation, it is important to highlight the changes regarding APPs, the areas of legal reserve and the requirement to register with the CAR, which proved to be of great relevance for agribusiness in general, specifically with regard to family farming, being able to reconcile the economic interests of small rural producers with protecting the environment through sustainability.

It should be noted that the main changes that the Code brings, the creation of the Environmental Regularization Program - PRA, with a view to reducing the legalization of producers in disagreement with the law, and new criteria for calculating the Permanent Preservation Areas. (APPs) and Legal Reserve (RL).

It is pointed out that Law 12.651 / 2012 presents innovations that allow an increase in the area available for economic activities, or, from another perspective, reduce the territorial requirements for environmental regularization and favor production activities.

The current Brazilian Forest Code was approved based on the prevailing argument that it was necessary to 'adapt' the environmental standard to the Brazilian reality, since 90% of rural landowners were irregular under the legislation of the time, in this case the Forest Code of 1965. The compliance with this Law is extremely important for the conservation of Brazilian biodiversity.

It is concluded that the Forest Code innovated by giving special treatment to small family properties, including releasing smallholders from constituting a legal reserve and permanent preservation area. Thus, the forestry legislation regularized the situation of thousands of smallholders and strengthened production and income generation.

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